IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 411 of 1995

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANIBEN WD/O NARANJI KASANJI THROUGH POWER OF ATTOR HOLDER - Petitioner(s)

Versus

NAGIN LAKHA & 2 – Respondent(s)

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Appearance :
MR JITENDRA M PATEL for Petitioner No(s).: 1.
MR JB PARDIWALA for Respondent No(s).: 1.
NOTICE SERVED for Respondent No(s).: 2,3.
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CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date : 25/07/2005

ORAL JUDGMENT

The petitioner is before this Court through a Power of Attorney Holder challenging the order passed by the Mamlatdar & ALT in Tenancy Case No.32F/3913/77 dated 29.01.1986 which was confirmed in appeal by the Deputy Collector, Valsad in Tenancy Appeal No.688 of 1986 by judgement and order dated 18.12.1987 against which a Revision Application being No.TEN.B.S. 29/88 was preferred before the Gujarat Revenue Tribunal (hereinafter referred to as “The Tribunal”) which too came to be rejected by the judgment and order dated 08.03.1991. The petitioner filed a review application against the said judgement and order of the Tribunal being Review Application No.TEN.C.S.3/91, which came to be rejected by an order dated 05.01.1995. The petitioner has prayed in para 12 as under.

> “12. The petitioner having no other adequate remedy approaches Your Lordships and prays that a writ of certiorari and/ or mandamus be issued under Articles 226 and 227 of the Constitution of India:
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> (A) to quash and set aside the order of the and A.L.T. Dated 29.1.86 at Annex. 'E' and the

order of the Dy. Collector dated 18.12.87 at Annex. 'F' and the order of the Gujarat Revenue Tribunal dated 8.3.91 and 5.1.95 at Annex. 'G' and 'H' respectively;

2.The facts of the case are set out by the learned Member of the Tribunal in his judgement and order of Revision Application in para 2 onwards. The gist of the facts are as under:

The tenant-since deceased, his heirs Naginbhai and Lallubhai gave an application to the Mamlatdar & ALT, Chikhli to declare them to be tenants of the land bearing S.No.697 admeasuring 5 acres, 14 gunthas of Village Degam and to fix purchase price under sec.32G of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter referred to as “the Act”). The Mamlatdar & ALT caused an inquiry under sec.32G of the Act, and passed order dated 28.11.1960, holding that the land being of the ownership of a widow, the sale of the suit land remains postponed under section 32F of the Act. It is the case of the petitioner that this order of Mamlatdar & A.L.T. was taken in suo motu revision by Collector, Valsad.

The petitioner has produced a copy of order passed by the District Deputy Collector, Valsad in Revision Applications No.118 & 119 dated 25th July 1963 wherein he has held that,

> “As inquiry has not been made by the Tribunal on all these points order passed for postponing the right of purchase requires to be set aside. The papers are returned to the lower court with the direction to hold fresh inquiry and then to pass orders on merits. Parties to be informed accordingly.”

Mr.Patel, learned advocate appearing for the petitioneris not able to point out anything in support of his contention that the said proceedings were suo motu, nor he is able to give any satisfactory reply to the question as to why there were two revision cases registered against a single order dated 28.06.1960 (sic., 25.08.1960/ sic., 28.11.1960), especially when only one parcel of land (being S.No.697 of Village Degam) is in dispute. Mr.Patel pleaded 'no instructions' on the point. On an inquiry as to what is the correct date of the order, learned

advocate Mr.Patel said that one of these dates is the correct date and according to him the date of the order is not significant as the text of the order is not in dispute.

3.Mr.Patel, the learned advocate for the petitioner next submitted that the order of the Mamlatdar & ALT in Inquiry Case No.2/Degam dated 28.08.1960 and the order passed by the Collector in Revision Case No.118-119 dated 25th July 1963 are not binding to the petitioner as the petitioner was not a party to the said proceedings. Having found the assertion of the learned advocate dehors the record the attention of the learned advocate was drawn to the contents of para 2 of the order of the Mamlatdar & ALT, which reads as under:

> “A public notice under sec.32G has been issued and published at the Village Chikhli (sic., Chavdi) by beat of drum and at the Office of the Mamlatdar, Chikhli. Individual notices have also been served upon the persons interested.”

4. However, the learned advocate reiterated that the petitioner was not served with any notice of these

proceedings and therefore, these orders holding respondents no.1 and 2 to be tenants are not binding to the petitioner.

5.Mr.Patel next submitted that on remand when the matter was pending before the Mamlatdar & ALT the petitioner had filed an application, a copy of which is not available with him. Hence, for the contents of the application the Court has to rely upon the order by which it was decided. Order is dated 08.10.1979.

It is mentioned in para 1 of the order (which is produced at Annexure 'C' to the memo of petition)that, 'The learned advocate for the land owner produced an application dated 16.08.1979 on 23.08.1979,' 'the same is without prejudice to the written reply dated 18.05.1978'. 'Naginbhai Lakhabhai had given a statement on 25.04.1978, that a person seeking relief under section 32F has to be in possession of the land and must be tilling the land, but then since 5-6 years he is not in possession, and hence notice issued under sec.32F is liable to be quashed', that there is a question of maintainability of notice under sec.32F, and being

it a question of law, the same be decided'. The Mamlatdar & ALT in the last para of the order has recorded that;

> “In this case in the inquiry under sec.32G the applicant was adjudged to be a tenant, but in the said inquiry rights of the widow were under suspension. There being amendment in sec.32F the rights of widow have come to an end, hence further proceedings are required to be taken, such proceedings have commenced. Wherein no proceedings for possession are required to be taken. But if possession is illegally taken away then, for that there is a provision in law, i.e. Sec.84. Hence the application of the landlord dated 23.08.1979 is rejected. .. .. “

Mr.Patel, learned advocate submitted that this was interim order and therefore, he did not challenge this order in higher forum.

6.The petitioner has challenged the order passed by the Mamlatdar & ALT in Tenancy Case No.32F/ 3913/ 77 dated 29.01.1986. Mr.Patel has based his

challenge on two grounds. Firstly, Mr.Patel asserted that the person claiming tenancy rights was not the tenant, and secondly, in the proceedings under sec.32G of the Act, the Mamlatdar & ALT could not have ordered the Circle Inspector (Tenancy), Chikhli to take possession of the land in question and hand over to the tenant. In support of his first submission, Mr.Patel invited attention of the Court to the statement of the tenant recorded in the inquiry under sec.32G of the Act on 25.08.1960, the deposition of the Power of Attorney Holder of the petitioner recorded on 24.07.1982. While for the second contention he relied upon a decision of Division Bench of this Court in the matter of **Navrangpura Gam Dharmada Milkat Trust & another Vs. Ramtuji Ramaji & others,** reported in 1993(2) GLR 1496. Mr.Patel asserted that the judgement and order of the Mamlatdar & ALT insofar as it directed the Circle Inspector (Tenancy) to take possession from the petitioner and to restore the same to the respondent-tenants was without jurisdiction as under sec.32G of the Act such an order could not have been passed and to that extent the order passed by the Mamlatdar & ALT, confirmed in appeal and in revision

is required to be quashed and set aside.

7. Mr.Patel, learned advocate placed heavy reliance on para 5(E) wherein the Division Bench of this Court was pleased to observe as under:

> ".. .. In our opinion, the judgement and order of the ALT as confirmed by the Dy. Collector as well as by the Gujarat Revenue Tribunal insofar as the authority is directed to deliver the possession by taking over the same from the petitioner-Trust to the tenant, the order goes beyond the jurisdiction of the Tribunal under sec.32G. None of the provisions of law was shown to us by Mr.A.J. Patel, learned counsel for respondent-tenant which would justify that part of operative part of judgement of the Tribunal. To that extent we are of the opinion that the judgement and the order of the A.L.T. as confirmed by the Dy. Collector as well as by the Gujarat Revenue Tribunal shall have to be quashed and set aside inasmuch as that part of direction is beyond the jurisdiction of the Tribunal. .. .."

Mr.Patel submitted that as was done by the Division Bench, the Mamlatdar & ALT ought to have left to the respondent-tenant to take recourse to law to take possession of the land. He further submitted that in view of the decision of the Division Bench, the judgement and order of the Mamlatdar & ALT, confirmed by the Deputy Collector and Gujarat Revenue Tribunal be quashed to the extent of issuance of directions of taking possession of land. Besides, Mr.Patel relied upon the following other decisions:

(i) 1998 (2) GLR 1141,

(ii) A.I.R. 1983 SC 648,

(iii) 1969 (10) GLR 484,

(iv) Special Civil Application No.7878 of 1996 (Coram: S.D. Dave, J.) order dated 04.02.1997, and

(v) 1997 (2) GLR 1041.

In the considered opinion of this Court none of these decisions have any application to the controversy involved in the present case. Hence the same are not discussed in detail.

8. Mr.Patel, learned advocate next submitted that though the petition is substantially under Article 227 of the Constitution of India, the same is required to be entertained as according to him there is a manifest error committed by the authorities below, which is required to be corrected by this Court. In support of his submission Mr.Patel relied upon a decision of the Hon'ble the Supreme Court in the matter of **Gopala Ganu Wagale Vs. Shri Nageshwardeo Patas Abhishekh Anusthan Trust, Patas,** reported in A.I.R. 1978 SC 347.

9. This petition is an illustration by which it is exhibited that howsoever good and benevolent law is enacted, the persons like the petitioner can always thwart its operation and can see to it that fruits of such enactment do not reach to the people for whose benefit such law is made. It is a sorry state of affairs that despite there being an adjudication and declaration as early as in the year 1960 that the respondents herein are tenants of the land in question, in 2005 they are still left high and dry. Not only that for all these years the mighty landlord

has deprived them of their livelihood dispossessing the tenant. Now a supertechnical plea is put forward contending that as proceedings in which the Mamlatdar & ALT has passed an order directing the Circle Inspector (Tenancy) to take possession of the land and to hand over to the tenant being under sec.32G of the Act, such direction could not have been issued. According to him the tenant should be asked to initiate fresh litigation for obtaining possession, which again will be contested tooth and nail by the landlord.

Mr.Patel, learned advocate appearing for the petitioner tried to win over the sympathy of the Court by mentioning that the land owner is a widowed lady, but then any sympathy for a widowed lady would be a misplaced sympathy as its resultant effect would be depriving the tenants of their legitimate rights. All the authorities not in one but in more than one round of litigation have held that the respondents are the tenants. Besides, the land owner, after amendment of sec.32F(1)(b) by Gujarat Act V of 1973, has not taken any steps to assert its right, and still is able to forestall the

flowing of benefits to the tenants.

10. To recapitulate, the scope and ambit of the controversy the facts in nutshell, are: it was an inquiry No.2/Degam under sec.32G of the Act. The Mamlatdar & ALT decided that the respondents are tenants and their right to purchase the land belonging to a widow shall stand postponed, the Mamlatdar & ALT on remand decided Tenancy Case No.32F/3913 of 1977 in light of the fact that the rights conferred on a widow under sec.32F have come to an end on amendment of the law. The respondents are held eligible to purchase the land and for determining the purchase price separate proceedings are to be taken. The Mamlatdar & A.L.T. on being informed that in the interregnum the tenant is dispossessed., he after recording a finding to that effect, directed the Circle Inspector (Tenancy) to take possession from the petition and hand it over to the tenant. The order is confirmed in appeal, and a revision and review against that is rejected. The petitioner after dispossessing the tenants has obtained protection from the Court qua possession of the land, and is continuing to be in possession

till date.

In this view of the matter to interfere with the order of the Mamlatdar & ALT will result into miscarriage of justice, and nothing else.

11. Mr.Patel, learned advocate wanted this Court to read the first order passed by the Mamlatdar & ALT in Inquiry Case No.2/Degam dated 28.08.1960 so as to mean that it only declares that the tenant's right to purchase the land belonging to a widow is postponed. He argued that this is not an order declaring the respondent to be a tenant. He submitted that since the case of the petitioner is that the respondent is not a tenant, more deeper inquiry ought to have been held and then there should have been a declaration in terms followed by the present order, that, 'right of the tenant to purchase the land is postponed'.

12. This Court is not able to accept the submission made by Mr.Patel because Mamlatdar & ALT was considering the question that whether particular land, belonging to a particular party is held by the

respondent as tenant or not. The inquiry was made because there was a claim of the respondent on the land of the petitioner as tenant and in that inquiry the Mamlatdar & ALT declared that right of the tenant to purchase the land stands postponed in light of sec.32F(1)(b) of the Act. Only because the Mamlatdar & ALT not being a skilled/ trained person to write judgement/ order in more vocal terms a poor tenant cannot be made to suffer. There is no doubt in the mind of this Court that by virtue of order, dated 28.08.1960 the respondent-tenant was held to be a tenant and his right of purchase was declared to be the postponed one.

The submission of Mr.Patel that the petitioner was not served with the process of the said proceedings is without any merit. If at all it was the case of the petitioner that the petitioner was not served he should have raised this question before the authority concerned. In absence of any such action this Court is supposed to accept the contents of the order, wherein it is stated that, “Individual notices have also been served upon the persons interested. Besides, a public notice under sec.32G of the Act

was also issued at the Village Chavdi, that too by beat of drum and at the Office of the Mamlatdar." The Deputy Collector has also recorded this fact as under:

> "In these cases the Tribunal issued the notice under section 32G on 20th August 1960 to the tenants and the landlords concerned fixing the inquiry on 25.8.60. .. .."

13. Besides the petitioner's application dated 23.08.1979 was rejected on 08.10.1979 wherein also it is mentioned that, 'in the inquiry under sec.32G of the Act respondents are adjudged to be tenants'. The petitioner-landlord has accepted the same and has not challenged the same in higher forum. Mr.Patel submitted that because it was interim order, the petitioner did not challenge, is of no consequence.

14. So far as the decision of Division Bench in the case of **Navrangpura Gam Dharmada Milkat Trust & another Vs. Ramtuji Ramaji & others,** (supra) is concerned the same has no application to the facts of the present case. The same was the case where in the

initial proceedings under sec.32G of the Act, an order for possession was passed. Besides, that case had glaring difference on facts. That was not the case of a person, who was illegally dispossessed during the pendency of the proceedings. In the case on hand the respondent-tenant who was otherwise held to be a tenant in the year 1960, was dispossessed without following the procedure recognised under the law. This fact is clearly borne out from the order of the Deputy Collector in Tenancy Appeal No.688 of 1986. The Deputy Collector has recorded that, 'in the year 1983 there was a so called compromise/ settlement between the land owner and the tenant' that, 'the said compromise/ settlement was, prima facie, for dispossessing the tenant', that, 'this shows that the possession of the disputed land was that of the tenant'.

In view of the glaring difference on facts the said decision has no application to the facts of the present case.

15. Mr.Unwalla, learned advocate for the respondent-tenant invited attention of the Court to a decision of this Court in the matter of **Manubhai @ Manibhai**

Parshottamdas Patel & another Vs. Ramchandra Bhogilal Bhatt & others, reported in 1989(1) GLR 146, wherein this Court had an occasion to pronounce that,

> ".. .. therefore, when the matter was remanded to the A.L.T., it was open to it to direct the landlords to hand over possession of the land to the petitioners and to determine the purchase price of the land. The A.L.T. has on the matter being remanded to it for fresh disposal held an inquiry and it came to an independent conclusion that the deceased was **illegally dispossessed** of the land between June 15, 1995 and March 3, 1973. It was under these circumstances that the A.L.T. directed the landlords to hand over the possession of the land to the petitioners. Under Sec.32(1B) of the Act it was open to the ALT to suo motu hold an inquiry and if it came to the conclusion that the tenant was in possession of the land between the appointed day, i.e. June 15, 1955 and the specified day, i.e. March 3, 1973 it is open to it to direct the landlord to hand over possession of the land to the petitioners. Inquiry as contemplated under sec.32(1B) of the Act can be held **simultaneously** with the proceedings under sec.32G of the Act. There is nothing in the Act which prohibits such simultaneous inquiry. .. .."

16.Mr.Unwalla, learned advocate invited attention of the Court to the facts of the case and could convince this Court that in substance the facts of both the cases

are similar. Therefore, in the considered opinion of this Court this later decision applies with full force to the facts of the case on hand. This Court does not find any reason to interfere with the orders passed by the authorities below and grant any relief to the petitioner.

17. So far as the decision of the Hon'ble the Apex Court in the matter of **Gopala Ganu Wagale Vs. Shri Nageshwardeo Patas Abhishekh Anusthan Trust, Patas,** reported in A.I.R. 1978 SC 347. (supra) is concerned the same has no application to the facts of the present case as in the opinion of this Court the authorities below have not committed any error much less a manifest error which will warrant this Court to interfere with the orders of the authorities below, while exercising its jurisdiction under Article 227 of the Constitution of India. The present is not the case wherein interference is called for while exercising jurisdiction under Article 227 of the Constitution of India.

18.In view of the aforesaid discussion, the present petition is dismissed. Rule is discharged with no orders as to costs. Interim relief is vacated.

19. At this juncture, Mr.Patel, learned advocate requests that interim relief which had operated in favour of the petitioner since 1995 be continued. This Court having come to the conclusion that the petitioner has no right to the land in question there is no reason to continue the interim relief, as continuance of

interim relief will amount to continuing injustice further, which the respondent-tenant had been suffering for all along. Therefore, the request is rejected.

(RAVI R. TRIPATHI, J.)

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